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DH06107-AC

United States
Department of
Agriculture

CERTIFIED RECEIPT REQUESTED

Office of
Administrative
Law Judges

July 19, 2010

Hearing Clerk

Room 1031
South Building

1400 Independence
Avenue SW

Washington, DC
20250-9200

(202) 720-4443
(202) 720-9776 fax

Mark Alan Gutman
6310 U.S. Route 6
Rome, Ohio 44085

Jeri Lynn Poling
6310 U.S. Route 6
Rome, Ohio 44085

Grand River Fur Exchange
(GRFE)
6310 U.S. Route 6
Rome, Ohio 44085

Dear Respondents:

Subject: **In re: Mark A. Gutman and Jeri Lynn Poling, individuals d/b/a
Grand River Fur Exchange, Respondents -
AWA Docket No. 10-0375**

Enclosed is a copy of the Complaint, which has been filed with this office under the Animal Welfare Act.

Also enclosed is a copy of the rules of practice which govern the conduct of these proceedings. You should familiarize yourself with rules in that the comments which follow are not a substitute for their exact requirements.

The rules specify that you may represent yourself personally or by an attorney of record. Unless an attorney files an appearance in your behalf, it shall be presumed that you have elected to represent yourself personally. Most importantly, you have **20 days from the receipt of this letter to file with the Hearing Clerk an original and three copies of your written and signed answer to the complaint.**

In the event this proceeding does go to hearing, the hearing shall be formal in nature and will be held and the case decided by an Administrative Law Judge on the basis of exhibits received in evidence and sworn testimony subject to cross-examination.

You must notify us of any future address changes. Failure to do so may result in a judgment being entered against you without your knowledge. We also need your present and future telephone number.

Your answer, as well as any motions or requests that you may hereafter wish to file in this proceeding, should be submitted in quadruplicate to the Hearing Clerk, OALJ, Room 1031, South Building, United States Department of Agriculture, Washington, D.C. 20250-9200.

Questions you may have respecting the possible settlement of this case, should be directed to the attorney whose name and telephone number appear on the last page of the complaint.

Sincerely,


L. EUGENE WHITFIELD
Hearing Clerk

Enclosure(s)

Sent to: Babak A. Rastgoufard, OGC
 Ruth Ann McDermott, APHIS

caa: 7/19/2010



UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

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OALJ/OHC

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In re:

MARK A. GUTMAN and
JERI LYNN POLING, individuals d/b/a
GRAND RIVER FUR EXCHANGE,

AWA No. 10- 0375

COMPLAINT

Respondents.

There is reason to believe that the respondents named herein have violated the Animal Welfare Act, as amended (7 U.S.C. §§ 2131-2159) (the "Act" or "AWA"), and the regulations and standards issued pursuant to the Act (9 C.F.R. §§ 1.1-3.142) (the "Regulations"). Therefore, the Administrator of the Animal and Plant Health Inspection Service ("APHIS") issues this complaint alleging as follows:

JURISDICTIONAL ALLEGATIONS

1. Respondent Mark Alan Gutman is an individual whose mailing address is 6310 U.S. Route 6, Rome, Ohio 44085.
2. Respondent Jeri Lynn Poling is an individual whose mailing address is 6310 U.S. Route 6, Rome, Ohio 44085.
3. Respondents Mark Alan Gutman and Jeri Lynn Poling collectively and/or individually do and/or have done business as Grand River Fur Exchange ("GRFE").
4. GRFE is believed to be an unincorporated association or partnership with the mailing address 6310 U.S. Route 6, Rome, Ohio 44085.

5. Respondents Mark Gutman, Jeri Lynn Poling and GRFE (collectively "respondents"), at all material times mentioned herein, have operated as a dealer, as defined in the Act and Regulations.

6. At all material times mentioned herein, respondents have operated without an Animal Welfare Act license.

7. At all material times mentioned herein, respondents have held a "commercial propagating license" issued by the Ohio Department of Natural Resources, Division of Wildlife.

ALLEGATIONS REGARDING THE SIZE OF RESPONDENTS' BUSINESS,
THE GRAVITY OF THE ALLEGED VIOLATIONS AND
RESPONDENTS' COMPLIANCE HISTORY AND GOOD FAITH

8. Respondents have shielded the full size of their business from APHIS.

9. Respondents are believed to have at least a moderate-sized business.

10. For example, in 2007, respondents are believed to have sold no fewer than 89 wild and/or exotic animals, including skunks, raccoons, coyotes, and foxes.

11. In 2006, respondents are believed to have sold no fewer than 75 wild and/or exotic animals, including wolves, skunks, raccoons, coyotes, and foxes.

12. The gravity of the violations alleged herein is serious. They include repeated instances in which respondents, without being licensed, operated as a dealer, which is a serious violation because enforcement of the Act and Regulations depends upon the identification of persons operating as dealers.

13. Although respondents do not have a previous history of litigated violations, respondents' conduct over the period described herein reveals a consistent disregard for, and unwillingness to abide by, the requirements of the Act and the Regulations. Despite

being made aware of the licensing requirements under the Act and Regulations, respondents continued to engage in regulated activity without a license and have sold numerous wild and/or exotic animals, including to at least one licensed exhibitor. Such an ongoing pattern of violations establishes a "history of previous violations" for the purposes of section 2149(b) of the Act (7 U.S.C. § 2149(b)) and lack of good faith.

ALLEGATIONS

14. No later than on or about February 25, 2003, APHIS began providing respondents with written and other notice of respondents' need to comply with the Act and Regulations, and, in particular, the licensing requirements therein.

15. APHIS has provided respondents with written and other notice of respondents' need to comply with the Act and Regulations, and, in particular, the licensing requirements therein, on multiple occasions, including, for example, on or about at least the following dates: February 25, 2003; June 11, 2003 and June 5, 2004.

16. Since at least on or about February 25, 2003, respondents have sold numerous wild and/or exotic animals, as defined in the Regulations, without having first obtained a valid license from the Secretary of Agriculture to do so.

17. Since at least on or about July 2005, and continuing through the present, respondents have offered for sale wild and/or exotic animals, such as, for example, skunks, raccoons, coyotes, and foxes.

18. Since at least on or about July 2005, and continuing through the present, respondents have operated as a dealer, as that term is defined in the Act and the Regulations, without being licensed, and have offered for sale wild and/or exotic animals, such as, for example, skunks, raccoons, coyotes, and foxes, for use as pets or exhibition purposes.

19. Since at least on or about July 2005, and continuing through the present, respondents have operated as a dealer, as that term is defined in the Act and the Regulations, and have offered for sale wild and/or exotic animals, as defined in the Regulations, for use as pets or exhibition purposes, in willful violation of section 2134 of the Act and section 2.1(a)(1) of the Regulations. 7 U.S.C. §§ 2134, 2132(h); 9 C.F.R. §§ 2.1(1), 1.1. Each violation and each day each violation occurred constitutes a separate violation. 7 U.S.C. § 2149(b). These violations took place on multiple occasions, including but not limited to on or about at least the following dates: July 7, 2005; June 9, 2006; July 18, 2008; December 15, 2008; July 18, 2009.

20. Since at least on or about February 2006, and continuing through the present, respondents have sold, in commerce, numerous wild and/or exotic animals, such as, for example, skunks, raccoons, coyotes, and foxes.

21. Since at least on or about February 2006, and continuing through the present, respondents have operated as a dealer, as that term is defined in the Act and the Regulations, without being licensed, and have sold, in commerce, numerous wild and/or exotic animals, such as, for example, skunks, raccoons, coyotes, and foxes, for use as pets or exhibition purposes.

22. Since at least on or about February 2006, and continuing through the present, respondents, without being licensed, have sold, in commerce, numerous wild and/or exotic animals, as defined in the Regulations, for use as pets or exhibition purposes, in willful violation of section 2134 of the Act and section 2.1(a)(1) of the Regulations. 7 U.S.C. §§ 2134, 2132(h); 9 C.F.R. §§ 2.1(a)(1), 1.1. The sale of each animal constitutes a separate violation. 7 U.S.C. § 2149(b). These violations took place on multiple occasions, including but not limited to on or about at least the following dates: May 5, 2006; May 6, 2006; May 11, 2006; May 12,

2006; May 31, 2006; June 6, 2006; June 17, 2006; June 20, 2006; July 2, 2006; and August 2, 2006.

WHEREFORE, it is hereby requested that for the purpose of determining whether respondents have in fact willfully violated the Act and the Regulations issued under the Act, this complaint shall be served respondents. Respondents shall file an answer with the Hearing Clerk, United States Department of Agriculture, Washington, D.C. 20250-9200, in accordance with the Rules of Practice governing proceedings under the Act (7 C.F.R. § 1.130 et seq.). Failure to file an answer shall constitute an admission of all the material allegations of this complaint.

The Animal and Plant Health Inspection Service requests:

1. That unless Respondents fail to file an Answer within the time allowed therefor, or file an Answer admitting all the material allegations of this Complaint, this proceeding be set for hearing in conformity with the Rules of Practice governing proceedings under the Act; and

2. That such order or orders be issued as are authorized by the Act and warranted under the circumstances, including an order: (a) requiring respondents to cease and desist from violating the Act and Regulations; (b) disqualifying respondents from obtaining an AWA license; and (c) assessing civil penalties against respondents in accordance with section 2149 of the Act (7 U.S.C. § 2149).

Done at Washington, D.C.

this 16th day of July, 2010

Adus Kevin Shea
Administrator
Animal and Plant Health Inspection Service

Babak A. Rastgoufard
Attorney for Complainant
Office of the General Counsel
United States Department of Agriculture
1400 Independence Avenue, SW.
Washington, DC 20250-1417
(202) 720-5935
(202) 690-4299 (facsimile)